APPELLANT PRO SE:

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IN THE
COURT OF APPEALS OF INDIANA

DWIGHT WAYNE JEFFERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0608-PC-421
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas G. Wright, Special Judge
Cause No. 48D03-8711-CF-150

September 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Dwight Wayne Jeffers entered a plea of guilty to murder and attempted murder in 1988. Jeffers subsequently sought post-conviction relief from his conviction of attempted murder, claiming that his plea was not knowingly, intelligently, and voluntarily entered because he was not advised that specific intent to kill is an element of attempted murder. He now appeals the post-conviction court's denial of his petition for post-conviction relief, raising the following issue for our review: whether his plea of guilty violates due process because he was not aware that specific intent to kill the victim was a critical element of the offense. Concluding that the post-conviction court did not err in determining that Jeffers was aware of the critical elements of the crime to which he was pleading guilty, we affirm.

Facts and Procedural History

The facts and procedural history leading up to Jeffers's conviction, as stated in Jeffers's direct appeal to this court, are as follows:

> Jeffers bound and gagged his ex-girlfriend in her garage, then strangled her to death. Also, he tried to strangle her daughter in her bedroom, but was unsuccessful. However, she suffered injuries to her neck, face and shoulder areas.
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> Jeffers was arrested and charged with murder, attempted murder, and criminal confinement.
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> The prosecutor and Jeffers's counsel negotiated and reached an oral plea agreement wherein Jeffers would plead guilty to murder and attempted murder and the State would dismiss Count III, criminal confinement. At arraignment, the court below thoroughly advised Jeffers of his rights and the waiver of certain rights if he entered guilty pleas.
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> After his advisement by the court, Jeffers pleaded guilty to murder and attempted murder and the State dismissed the criminal confinement count. Later, at his sentencing hearing however, Jeffers orally moved the court to withdraw his earlier guilty pleas as to both charges. After hearing testimony, the trial court denied Jeffers's motion and sentenced him to 40 years for

> murder, 30 years for attempted murder, then ordered the sentences to be served consecutively.

Jeffers v. State, No. 48A04-8902-CR-58, slip op. at 2-3 (Ind. Ct. App., July 12, 1989), trans. denied. Jeffers appealed, contending that the trial court erred in denying his motion to withdraw his guilty plea and in sentencing him. We affirmed both Jeffers's convictions and his sentence. Id. at 5, 7.

In 1990, Jeffers filed, pro se, a petition for post-conviction relief, alleging that his plea was not entered intelligently and voluntarily and also that his trial counsel was ineffective. After the State responded to Jeffers's petition in December 1990, no further pleadings were filed and no further proceedings were held until June 2005, when Jeffers amended his petition.[1] A hearing was held in June 2006, at which time Jeffers stated:

> I'm alleging that my plea of guilty to attempted murder was not knowingly [sic], voluntary, or intentional because I was not advised that the specific intent to kill is a critical element of attempted murder.

He also contended that the State's defense of laches was not applicable because this issue could be decided on review of the record and indicated his intention to rely solely on the record of his guilty plea hearing. The post-conviction court entered findings and conclusions denying Jeffers's petition:

I. FINDINGS BY THE COURT

[1] In November 1990, the Indiana State Public Defender entered an appearance on Jeffers's behalf. The Public Defender did not file any pleadings or appear in any proceedings on Jeffers's behalf and withdrew

A. On November 12, 1987, [Jeffers] appeared in open Court, before the Honorable Thomas [Newman] and at such time was "duly advised of his rights hereunder, and informed of the charges against him, and being given a copy of said charges . . . ." The Court entered a plea of not guilty for [Jeffers].

B. Count II, Attempted Murder states that "SAMUEL E. HANNA, being duly sworn upon his oath, further says that: On or about the 10th day of November, 1987, in Madison County, State of Indiana, DWIGHT W. JEFFERS, did attempt to commit the crime of murder by knowingly trying to strangle one Melissa D. Archer, by placing a length of telephone cord around the throat of Melissa D. Archer, and with the intent to kill Melissa D. Archer, which conduct constituted a substantial step toward the commission of the crime of murder.

ALL OF WHICH IS CONTRARY to the form of the statute in such cases made and provided, to-wit: I.C. 35-41-5-1 and I.C. 35-42-1-1, and against the peace and dignity of the State of Indiana.["]

C. On August 1, 1987, [Jeffers] appeared before the Court for the purpose of entering pleas of guilty to Count I, Murder, and Count II, Attempted Murder, and was informed by the Court "that pleading guilty, you are admitting the truth of the allegations as brought forth by the State of Indiana and that we will proceed with judgment of conviction and sentence you without a trial. Do you understand that? Answer. Yes.["]

D. Subsequently, [Jeffers], after a summary of facts of the crimes was presented by the State, entered a plea of guilty to Count II, attempted murder.

II. CONCLUSIONS BY THE COURT

A. The Court finds that [Jeffers], during the proceedings, was informed by the Court of the elements of the crime of attempted murder, i.e. that he did the alleged acts with the "intent to kill" Melissa D. Archer.

B. The Court finds that [Jeffers's] plea of guilty to Attempted Murder was knowingly and voluntarily made and had a factual basis therefore.

C. The Court finds that the finding of [Jeffers] guilty of the crime of attempted murder as charged and entry of conviction thereon by the Court did not violated [sic] the Fifth and Fourteenth Amendment[s] to the United States Constitution nor Article One Section 12 of the Indiana Constitution or the laws of the State of Indiana.

Appellant's Appendix at 447-48. Jeffers now appeals.

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its appearance in July 1997. In 1994, the trial judge recused himself from the case and a new judge qualified and assumed jurisdiction later that year.

Discussion and Decision

I. Standard of Review

A defendant who has exhausted the direct appeal process may challenge the correctness of his conviction and sentence by filing a petition for post-conviction relief. Specht v. State, 838 N.E.2d 1081, 1086 (Ind. Ct. App. 2005), trans. denied. Post-conviction procedures create a narrow remedy for subsequent collateral challenges to convictions. Id. "[C]omplaints that something went awry at trial are generally cognizable only when they show deprivation of the right to effective assistance of counsel or issues demonstrably unavailable at the time of trial or direct appeal." Sanders v. State, 765 N.E.2d 591, 592 (Ind. 2002).

Pursuant to the rules of post-conviction relief, the petitioner must establish the grounds for relief by a preponderance of the evidence. See Ind. Post-Conviction Rule 1, § 5; Oliver v. State, 843 N.E.2d 581, 586 (Ind. Ct. App. 2006), trans. denied. To succeed on appeal from the denial of relief, the petitioner must show that the evidence is without conflict and leads unerringly and unmistakably to a conclusion opposite the one reached by the post-conviction court. Oliver, 843 N.E.2d at 586. The post-conviction court is the sole judge of the weight of the evidence and the credibility of the witnesses. Id. On appeal, we may consider only the evidence and reasonable inferences supporting the judgment of the post-conviction court. Specht, 838 N.E.2d at 1086. Furthermore, although we do not defer to the post-conviction court's legal conclusions, we accept its factual findings unless they are clearly erroneous. Id.

II. Knowing, Voluntary, and Intelligent Guilty Plea

Before a trial court may accept a defendant's guilty plea, the trial court must determine that a defendant is aware of the nature of the charge to which he is pleading guilty. Henderson v. Morgan, 426 U.S. 637, 645 (1976); Ind. Code § 35-35-1-2(a)(1) ("The court shall not accept a plea of guilty . . . without first determining that the defendant understands the nature of the charge against him . . . ."). A plea of guilty is not "voluntary in the sense that it constitute[s] an intelligent admission that [a defendant] committed the offense unless the defendant received 'real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.'" Henderson, 426 U.S. at 645 (quoting Smith v. O'Grady, 312 U.S. 329, 334 (1941)). The trial court does not need to advise the defendant of the specific elements of the offense to find that the defendant understands the charge, but must confirm that the defendant is aware of the elements. See State v. Sanders, 596 N.E.2d 225, 228 (Ind. 1992), cert. denied, 507 U.S. 960 (1993). A defendant may be sufficiently aware of an element in the absence of a specific advisement when he acknowledges his guilt of the offense on the basis of facts that establish his guilt of the particular element in question. Id. A person may not be convicted of attempted murder without proof that the person specifically intended to kill his victim. Spradlin v. State, 569 N.E.2d 948, 949-50 (Ind. 1991). Jeffers contends that because the record contains no evidence that he was advised or aware that specific intent to kill is a critical element of the crime of attempted murder prior to pleading guilty, his guilty plea was invalid.

In Patton v. State, 810 N.E.2d 690 (Ind. 2004), our supreme court considered this

specific issue. The defendant, intoxicated and armed with a sawed-off shotgun, came upon a parked car in which Michael Pack was in the driver's seat and Deitra Maxey was in the passenger seat. The defendant fired a shot into the driver's side window that seriously injured Maxey. He fired a second shot into the driver's side window that killed Pack. The defendant then sexually assaulted Maxey. The defendant pled guilty to murder, attempted murder, rape, criminal confinement, three counts of criminal deviate conduct, and dealing in a sawed-off shotgun.[2] The defendant later filed a petition for post-conviction relief alleging, *inter alia*, that his guilty plea to attempted murder was not knowing, voluntary, and intelligent. The post-conviction court denied his petition. On appeal, our supreme court noted that "[t]here has been confusion over the extent to which, in order for a defendant to be aware of the nature of the charge, the defendant must be advised of and understand each element of the charge at the time defendant pleads guilty." Id. at 693.

The court analyzed both Henderson v. Morgan and Indiana cases concerning this issue. As to Henderson, the court determined that the case stands for four principles:

> (1) that a defendant has a constitutional right to "'real notice of the true nature of the charge'" to which the defendant pleads guilty . . .;
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> (2) that that right will have been honored where the record of the guilty plea hearing "contains either an explanation of the charge by the trial judge, or at least a representation by defense counsel that the nature of the offense has been explained to the accused[;] even without such an express representation, it may be appropriate to presume that in most

[2] Because the defendant denied at his sentencing hearing that he had any intent to kill Pack, the supreme court held on direct appeal that the trial court should not have accepted his guilty plea to murder. The murder conviction and corresponding death sentence were vacated, and the case remanded. See Patton v. State, 517 N.E.2d 374, 376 (Ind. 1987).

cases defense counsel routinely explained the nature of the offense in sufficient detail to give the accused notice of what he is being asked to admit . . .";

(3) where intent is "a critical element of the offense . . ., notice of that element is required . . ."; [and]

(4) even where the notice required has not been given and cannot be presumed, a defendant is not entitled to relief if the error is harmless beyond a reasonable doubt.

Patton, 810 N.E.2d at 696 (citations omitted). The court held that failure of notice that specific intent is an element of attempted murder is harmless error "where during the course of the guilty plea or sentencing proceedings, the defendant unambiguously admits to, or there is other evidence of, facts that demonstrate specific intent beyond a reasonable doubt." Id. at 696-97. The court determined that Indiana law neither imposes any greater obligations on the trial court nor confers any greater rights on the defendant than those imposed by Henderson. Id. at 697. Finally, the court held that, unlike most cases in which intent is not a critical element of the offense requiring notice to satisfy due process, the specific intent element of attempted murder is a critical element. Id.

Turning to the specific facts in Patton, the court noted that the evidence in the record was without conflict that neither the court nor the defendant's attorney specifically advised him of the specific intent element.[3] Id. at 698. The court also noted that there was nothing in the post-conviction court's findings nor in its own review of the record to support a conclusion beyond a reasonable doubt that the defendant acted with specific intent to kill when he fired the shot that injured Maxey. Id. at 698-99. At the guilty plea hearing, the trial

[3] Trial counsel testified at the post-conviction hearing that he did not advise the defendant that he had to specifically intend to kill Maxey in order to be guilty of attempted murder. Id.

court asked the defendant if he admitted the allegation in the charging information that he knowingly attempted to kill another human being by shooting at and against her person by means of a deadly weapon, and the defendant replied, "Yes." Id. The record contained no evidence that the defendant ever acknowledged shooting Maxey or even knowing that she was in the vehicle when he fired a shot through the driver's side window. Further, the defendant denied killing Pack intentionally, and "it seems to us likely that . . . [the defendant] would have denied intending to kill Maxey if he had been on notice of the specific intent element of the offense of attempted murder." Id. at 699. Accordingly, the court held that the defendant's guilty plea did not comport with Henderson and the post-conviction court erred in concluding otherwise. Id.

Jeffers contends that his case is "materially indistinguishable" from Patton. Brief of the Appellant-Petitioner at 13. He points out that the trial court did not advise him of the elements of attempted murder at his guilty plea hearing, that the State did not present any facts that would demonstrate he specifically intended to kill Melissa "when he placed the telephone cord around her neck," id. at 14, that he denied at the sentencing hearing that he had any intent to kill Melissa, and that Melissa's testimony at the sentencing hearing is devoid of facts demonstrating he had the specific intent to kill her. In addition, he avers in his affidavit that his counsel never advised him of the specific intent element. Id. at 70.

Although there are many similarities between this case and Patton, we disagree with Jeffers that the two cases are "materially indistinguishable." We note first that the defendant in Patton was charged with "knowingly attempting to kill another human being, Dietra

Maxey, by shooting at and against the person of Deitra Maxey by means of a deadly weapon." 810 N.E.2d at 698-99. Jeffers was charged with "knowingly trying to strangle one Melissa D. Archer, by placing a length of telephone cord around the throat of Melissa D. Archer, and with the intent to kill Melissa D. Archer . . . ." Appellant's App. at 103 (emphasis added). We acknowledge that the trial court did not read the information to Jeffers at his guilty plea hearing, and we will accept as true the averment in Jeffers's affidavit that his counsel never explained the specific intent element.[4] However, the record shows that Jeffers was "informed of the charges against him, and . . . given a copy of said charges" at his initial hearing. Appellant's App. at 94. Unlike the defendant in Patton, Jeffers was charged with having the specific intent to kill, and the record shows that he was informed of and given a copy of the charge against him.[5]

As for the denial of intent, in Patton, the defendant denied killing Pack intentionally and the court believed it likely he would have denied specifically intending to kill Maxey. 810 N.E.2d at 699. Here, Jeffers was asked, "At the time you went to that home that night, had you any intent of harming either Melissa or her mother?," and he responded, "No." Trial Record of Proceedings at 203 (emphasis added). Jeffers also asked that the trial court

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[4] Jeffers's trial counsel was deceased by the time of the post-conviction hearing. See Brief of Appellee at 7.

[5] Jeffers argues that this is not a timely advisement, citing Maleck v. State, 265 Ind. 604, 358 N.E.2d 116 (1976). In Maleck, our supreme court held that it is necessary for the trial judge to fully advise a defendant of his right to trial by jury, his right against self-incrimination, and his right to confront his accusers at the time a guilty plea is tendered or have a record before him which demonstrates a full advisement, because "[o]nly when a defendant is seriously considering entering a guilty plea will the advisement be meaningful . . . ." Id. at 118. We need not decide whether the principles of Maleck should also apply to this

consider that he had "no prior intent of hurting or injuring either of these women." Id. at 205 (emphasis added). Unlike the defendant in Patton, who specifically denied having the intent to kill when he fired his weapon, Jeffers only denied having the intent to kill anyone when he arrived at the Archer home. He did not speak to his intent at the time he committed the acts.

Finally, we note that in Patton, the court found no evidence to support a conclusion that the defendant acted with specific intent to kill when he fired the shot that injured Maxey because there was no evidence that he ever acknowledged shooting at her or even knowing that she was in the vehicle when he shot. 810 N.E.2d at 699. Here, both the State's factual basis and Melissa Archer's testimony at the sentencing hearing support a conclusion that Jeffers was acting with specific intent to kill when he placed a cord behind Melissa Archer's neck and tried to wrap it around her throat. See Trial R. of Proceedings at 128, 290, 292, 296-97. This is not a case of an errant shot hitting an unseen victim; rather, this is a case of a potentially deadly personal attack directed at a specific victim.

For these reasons, we believe that Jeffers was sufficiently advised and aware of the specific intent element of attempted murder when he entered his plea and we cannot say that the undisputed evidence leads only to a conclusion opposite that reached by the post-conviction court.

Conclusion

The record supports the post-conviction court's conclusion that Jeffers's plea was knowingly and voluntarily entered. The judgment of the post-conviction court is therefore

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situation, as we are not relying solely on the fact that he was informed of and given a copy of the charge at his

affirmed.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.

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initial hearing nine months prior to his guilty plea.